IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.4523 OF 1992

Shri Dhondiram Sambhaji Bhoite Petitioner
since deceased his L.Rs :
1-a) Smt. Shantabai Dhondiram Bhoite
and ors.

Vs

Shree Ganapati Namdeo Lohar, .. Respondent

Mr.R.R.Bhosale, h/f Ms Vijaymala R Bhosale for the petitioner.
Mr S.B.Deshmukh h/f Mr A.V.Anturkar, for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 18TH MARCH, 2006

P.C.:

1. This petition is directed against the judgment and order dated 18.10.1991 dismissing the Misc.Civil Appeal No.68 of 1989 filed by the petitioner. The appeal was filed against the order dated 23.1.1989 passed by the learned Civil Judge Jr.Dn. Phalton, dismissing Regular Darkhast No.143 of 1987. The Darkhast was filed by the petitioner for execution of the decree dated 29.6.1974 in a suit for specific performance of the contract dated 18.9.1963.

2. The petitioner-decree holder had filed a suit for specific performance of the contract dated 18.9.1963

in respect of the land admeasuring 2 acres and 20 Gunthas in Survey No.129/3 situated at village Nimbalak, Taluka Phaltaon, District Satara. The petitioner was directed to deposit Rs.1000/- in the Court for execution of the decree. The Regular Darkhast No.204 of 1974 filed by the petitioner came to be dismissed for nonprosecution on 29.8.1985. The petitioner, instead of seeking restoration of the said darkhast, filed an application for extension of time to deposit Rs.1000/-, as directed by the judgment and decree dated 27.6.1986. That application, according to the petitioner, remained pending. Admittedly, the amount of Rs.1000/- was deposited on 25.11.1986, i.e. after the period of 12 years as provided under Article 136 of the Limitation Act. The petitioner, instead of seeking restoration of Regular Darkhast No.204 of 1974, filed the second darkhast, being Regular Darkhast No.143 of 1987, on 15.4.1987. The order impugned in the present writ petition is passed in the second darkhast which was admittedly filed beyond the period of limitation. Mr.Bhosale, learned counsel for the petitioner, submitted that the application for extension of time to deposit the amount of Rs.1000/- was filed before expiry of 12 years and was pending when second Darkhast was filed and, therefore, it cannot be said that the said darkhast was filed beyond the period of limitation. I am unable to accept the

submission advanced by Mr Bhosale for a simple reason that the application dated 27.6.1986 for extension of time was filed in the earlier darkhast which had already been dismissed for nonprosecution on 29.8.1985. Moreover, the amount of Rs.1000/- was also deposited on 25.11.1986, i.e. after the period of limitation. The second darkhast was also filed after the period of 12 years provided under section 136 of the Limitation Act. The judgment relied upon by Mr Bhosale, learned counsel for the petitioner, in Abdul Rashid Vs Sri Sitaramji Maharaj Brajman and others, AIR 1974 Allahabad 275 is of no avail to the petitioner in view of the peculiar facts and circumstances of the case. I find no ground or reason to interfere with the order impugned in the present writ petition under Article 227 of the Constitution of India. The writ petition, accordingly, fails and is dismissed as such. No order as to costs.

(D.B.Bhosale, J.)